MONTANA LEGISLATIVE HISTORY

Chapter 503 ~~19~~ 2001

Bill H 313 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	2-9	✓ C	Hearing Date(s)	3-20	✓ C
	2-16	✓ C		3 29	✓ C
	_____	___ C		_____	___ C
	_____	___ C		_____	___ C
Date Out	_____	___ C			

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

Bill Type - Number: HB 313 Fiscal Note
Short Title: Revise laws relating to domestic violence
Primary Sponsor: Gay Ann Masolo

Bill Actions - **Current Bill Progress:** Became Law

Bill Action Count: 58

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	05/01/2001			
(H) Signed by Governor	05/01/2001			
(H) Transmitted to Governor	04/21/2001			
(S) Signed by President	04/21/2001			
(H) Signed by Speaker	04/19/2001			
(C) Sent to Printing	04/17/2001			
(H) Returned from Enrolling	04/16/2001			
(H) Sent to Enrolling	04/13/2001			
(H) 3rd Reading Passed as Amended by Senate	04/13/2001	97	2	
(H) Scheduled for 3rd Reading	04/13/2001			
(H) 2nd Reading Senate Amendments Concurred	04/12/2001	97	1	
(H) Scheduled for 2nd Reading	04/12/2001			
(S) Returned to House with Amendments	03/31/2001			
(S) 3rd Reading Concurred	03/31/2001	41	7	
(C) Sent to Printing	03/30/2001			
(S) 2nd Reading Concurred as Amended	03/30/2001	40	8	
(S) 2nd Reading Motion to Amend Failed	03/30/2001	23	25	
(S) 2nd Reading Motion to Amend Carried	03/30/2001	25	23	
(S) 2nd Reading Motion to Amend Carried on Voice Vote	03/30/2001	49	1	
(S) Motion Carried	03/30/2001			
(S) Scheduled for 2nd Reading	03/30/2001			
(C) Sent to Printing	03/29/2001			
(S) Committee Report--Bill Concurred as Amended	03/29/2001			(S) Judiciary
(S) Committee Executive Action--Bill Concurred as Amended	03/29/2001	7	1	(S) Judiciary
(S) Hearing	03/20/2001			(S) Judiciary
(S) Referred to Committee	02/28/2001			(S) Judiciary

(S) First Reading	02/28/2001			
(H) Transmitted to Senate	02/22/2001			
(H) 3rd Reading Passed	02/22/2001	97	0	
(H) Scheduled for 3rd Reading	02/22/2001			
(C) Sent to Printing	02/20/2001			
(H) 2nd Reading Passed as Amended	02/20/2001	100	0	
(H) 2nd Reading Motion to Amend Carried	02/20/2001	99	1	
(H) Scheduled for 2nd Reading	02/20/2001			
(C) Sent to Printing	02/17/2001			
(H) Committee Report--Bill Passed as Amended	02/16/2001			(H) Judiciary
(H) Committee Executive Action--Bill Passed as Amended	02/16/2001	19	0	(H) Judiciary
(H) Hearing	02/09/2001			(H) Judiciary
(H) Fiscal Note Printed	01/25/2001			
(H) Fiscal Note Received	01/23/2001			
(C) Introduced Bill Text Available Electronically	01/16/2001			
(H) Fiscal Note Requested	01/16/2001			
(H) Referred to Committee	01/16/2001			(H) Judiciary
(H) First Reading	01/16/2001			
(H) Introduced	01/16/2001			
(C) Draft Delivered to Requester	01/15/2001			
(C) Draft Ready for Delivery	01/03/2001			
(C) Draft in Assembly/Executive Director Review	01/02/2001			
(C) Draft in Final Drafter Review	01/02/2001			
(C) Bill Draft Text Available Electronically	01/02/2001			
(C) Draft in Input/Proofing	01/02/2001			
(C) Draft to Drafter - Edit Review [SAB]	12/29/2000			
(C) Draft in Edit	12/28/2000			
(C) Draft in Legal Review	12/28/2000			
(C) Draft to Requester for Review	12/15/2000			
(C) Draft to Requester for Review	12/14/2000			
(C) Fiscal Note Needed	12/05/2000			
(C) Draft Request Received	12/05/2000			

HOUSE BILL NO. 313

INTRODUCED BY G. MASOLO

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO DOMESTIC VIOLENCE; PROVIDING FOR THE QUALIFICATIONS AND CERTIFICATION OF DOMESTIC VIOLENCE COUNSELORS AND FACILITATORS; PROVIDING FOR INTERVENTION COUNSELING REFERRALS FOR PERSONS CONVICTED OF AN ASSAULT ON A PARTNER OR FAMILY MEMBER; PROVIDING FOR OFFENDER INTERVENTION ASSESSMENTS AND COUNSELING; AUTHORIZING PROTECTIVE ORDERS FOR A PARTNER OR FAMILY MEMBER OF A VICTIM OF DELIBERATE HOMICIDE OR MITIGATED DELIBERATE HOMICIDE; CREATING ENHANCED PENALTIES FOR AN ASSAULT ON A PARTNER OR FAMILY MEMBER THAT IS COMMITTED WITHIN THE VISION OR HEARING OF A MINOR; PROVIDING THAT A SENTENCE FOR AN ASSAULT ON A PARTNER OR FAMILY MEMBER REQUIRES THE OFFENDER TO COMPLETE ALL RECOMMENDATIONS FOR COUNSELING, REFERRALS, ATTENDANCE AT PSYCHOEDUCATIONAL GROUPS, AND TREATMENT, INCLUDING ANY INDICATED CHEMICAL DEPENDENCY TREATMENT; PROVIDING FOR REPORTS TO THE SENTENCING COURT AND PROBATION OFFICER; AND AMENDING SECTIONS 40-15-102 AND 45-5-206, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Purpose.** The profession of providing assessments, referrals, and counseling for offenders who have committed an assault on a partner or family member and the profession of facilitating psychoeducational groups for offenders who have committed an assault on a partner or family member profoundly affect the lives of all Montanans. It is the purpose of [sections 1 through 15] to provide for the common good by ensuring the ethical, qualified, and professional practice of assessment, counseling, referrals, and facilitation of psychoeducational groups for offenders. [Sections 1 through 15] and the rules adopted by the board establish standards of education, training, and experience for those who seek to engage in the practice of counseling offenders who have committed an assault on a partner or family member and the practice of facilitation of psychoeducational groups for offenders who have committed an assault on a partner or family member.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 15], unless the context requires

otherwise, the following definitions apply:

(1) "Assault on a partner or family member" has the meaning provided in 45-5-206 for partner or family member assault.

(2) "Board" means the board of social work examiners and professional counselors established under 2-15-1854.

(3) "Certified domestic violence counselor" means a counselor who is in compliance with the requirements of [sections 1 through 15] and the board's rules. Certified domestic violence counselors may provide preliminary assessments for counseling, referrals, and counseling and may facilitate psychoeducational groups for domestic violence offenders.

(4) "Certified facilitator" means a facilitator who is in compliance with the requirements of [section 4] and the board's rules and who conducts psychoeducational groups under the supervision of a certified domestic violence counselor.

(5) "Chemical dependency treatment" means required counseling and treatment related to chemical dependency issues.

(6) "Counseling" means professional counseling as defined in 37-23-102 and includes group counseling for the purposes of [sections 1 through 15].

(7) "Department" means the department of commerce provided for in 2-15-1801.

(8) "Investigative criminal justice report" means the investigative report prepared by a law enforcement agency associated with an offender's arrest for an assault on a partner or family member, excluding any confidential information relating to the victim's location.

(9) "Offender" means a person convicted of an assault on a partner or family member.

(10) "Offender intervention program" means the combination of counseling and facilitator services that is organized in a judicial district to provide a preliminary assessment for counseling, certified domestic violence counselor services, and certified facilitator services that are required for an offender.

(11) "Offender's residence" means the offender's home address at the time of the assault on a partner or family member.

(12) "Preliminary assessment for counseling" means the counseling assessment completed by a certified domestic violence counselor to determine an offender's need for counseling, attendance at psychoeducational groups, and referrals for other treatment. This assessment must be completed either before or within 4 weeks after counseling and psycho educational groups are started.

(13) "Psychoeducational group" means a group discussion, with instructional content themes, that

encourages sharing and feedback, increases self-awareness, and is aimed at facilitating change in group members' daily lives.

(14) "Recreational intoxicant" means a substance, drug, or other chemical that was taken for the purpose of causing a person to be in a different emotional or psychological state and was not taken for a medically recognized therapeutic purpose.

(15) "Supervision" means the ability to have timely and direct access to a supervisor on a daily basis.

(16) "Victim" means a person against whom the offender committed an assault.

NEW SECTION. **Section 3. Board powers and duties.** (1) The board shall:

(a) certify domestic violence counselors and facilitators who provide offender intervention programs for compliance with state law and the rules of the board;

(b) adopt rules:

(i) for certification requirements for facilitators for psychoeducational groups;

(ii) for certification requirements for domestic violence counselors;

(iii) for application forms, for establishing fees for certification and renewal of certification, and for establishing renewal dates;

(iv) for training programs and continuing education requirements to promote the quality of offender intervention counseling;

(v) necessary to implement the provisions of [sections 1 through 15];

(vi) specifying the scope of assessments;

(vii) specifying the scope of offender intervention counseling and psychoeducational group counseling;

(viii) concerning notification of victims;

(ix) concerning victim and offender confidentiality; and

(x) for complaints against and discipline of certified domestic violence counselors and certified facilitators; and

(c) compile a list of certified offender intervention programs by March 1, 2004, and provide the list upon request either electronically or by mail.

(2) Fees established by the board must be commensurate with the costs of the function for which the fee is charged.

NEW SECTION. **Section 4. Domestic violence counselor and facilitator certification.** (1) In order

to be a certified domestic violence counselor, an individual must:

(a) have a master's degree or a doctoral degree and be licensed in psychiatry, psychology, social work, or professional counseling or have a master's degree in one of those fields;

(b) be active in the supervision stage of the licensed field; and

(c) have completed training and experience as required by the rules of the board.

(2) In order to be a certified facilitator, an individual must have a bachelor's degree in human services or the equivalent experience and training as determined by the board and have completed training and experience as required by the rules of the board.

NEW SECTION. **Section 5. Qualifications required -- exceptions.** (1) (a) Except as otherwise provided in [sections 1 through 15], a person may not practice as a certified domestic violence counselor or as a certified facilitator for psychoeducational groups or represent to the public that the person is certified to provide the specified counseling unless the person is in compliance with the provisions of [sections 1 through 15] or the person is subject to an exception created by [sections 1 through 15] or by a rule adopted by the board.

(b) Persons providing domestic violence counseling or facilitation services must be certified by January 1, 2004.

(2) If a certified domestic violence counselor or certified facilitator who provides offender intervention counseling was convicted of an assault on a partner or family member, at least 3 violence-free years must have passed after the conviction before the certified domestic violence counselor or certified facilitator may provide services in an offender intervention program.

NEW SECTION. **Section 6. Offender intervention counseling referral.** (1) The court shall notify the offender intervention program of the court's sentence and the court's judgment ordering the offender to complete a preliminary assessment and all recommended counseling, referrals, and attendance at psychoeducational groups, as well as other recommended treatment, including chemical dependency treatment.

(2) A copy of the investigative criminal justice report must be sent to the offender intervention program to assist certified domestic violence counselors and certified facilitators in completing the offender's assessment, counseling, referrals, and psychoeducational group counseling.

(3) The court's referral of the offender's investigative report to the offender intervention program does not violate the confidentiality provisions under Title 44, chapter 5. The court shall adopt and the offender intervention program must include confidentiality procedures to protect the privacy rights of the victim and

offender.

NEW SECTION. **Section 7. Preliminary offender intervention assessment.** (1) Offenders shall complete a preliminary assessment for counseling and psychoeducational groups. The assessment must include a review of the offender's need for counseling, referrals, attendance at psychoeducational groups, and other treatment, including chemical dependency treatment.

(2) Issues reviewed in the preliminary assessment must include:

(a) the offender's history of violence, including prior arrests;

(b) power and control issues;

(c) mental health issues;

(d) gender bias;

(e) a risk assessment;

(f) chemical dependency issues; and

(g) any other characteristic that would make the offender unable to participate meaningfully in group sessions.

(3) The certified domestic violence counselor must have access to a copy of the investigative criminal justice report to assist with the counseling assessment. At the conclusion of the preliminary assessment, the certified domestic violence counselor shall recommend that the offender complete the appropriate referrals for counseling and treatment, including chemical dependency treatment, and the appropriate number of counseling sessions and psychoeducational group meetings based on the assessment. The recommended referral may not be less than 40 hours.

NEW SECTION. **Section 8. Offender intervention program content.** (1) The offender intervention program must focus on the offender's actions. The program must emphasize the victim's right to safety and control over the victim's own life. The program must explore power, control, and attachment issues, the impact of domestic violence on the victim and children, and gender in relationships. Topics covered by psychoeducational groups must include society's myths and attitudes about gender and domestic violence.

(2) An offender intervention program may charge fees on a sliding scale to assist the program in providing services to offenders from all economic backgrounds.

NEW SECTION. **Section 9. Report to court or probation officer.** (1) The head of the offender

intervention program shall report to the court and the offender's probation officer. The report does not breach confidentiality.

(2) The head of the offender intervention program shall report to the court or the offender's probation officer, if the offender is assigned a probation officer, when:

(a) the offender has started the program;

(b) the offender has completed the assessment and the program has established recommendations for counseling, referrals, and attendance at psychoeducational groups, as well as other recommended treatment, including chemical dependency treatment;

(c) the offender has violated the offender intervention program rules related to attendance, the use of violence, and the use of recreational intoxicants; and

(d) the offender has completed the program.

NEW SECTION. **Section 10. Offender intervention counseling groups.** Offender intervention counseling sessions and psychoeducational groups must be conducted in a group format with one male and one female certified domestic violence counselor or certified facilitator if staffing is available. Groups must be limited to 15 offenders in a group.

NEW SECTION. **Section 11. Offender intervention counseling confidentiality.** (1) Offender intervention programs must have policies and procedures to protect the confidentiality of the offender and the victim. The investigative criminal justice report may be used within the offender intervention counseling sessions and psychoeducational groups after precautions are taken to protect confidentiality.

(2) The certified domestic violence counselor or certified facilitator may contact the victim of the assault. The certified domestic violence counselor or certified facilitator may notify the victim that the offender intervention program is not a guarantee that the offender will not be violent. The victim may be asked to provide information about the most recent offense, the offender's history of violence, the offender's use of recreational intoxicants, the offender's use of power and control over the victim, and whether the offender has committed another offense. All precautions must be taken to prevent this contact from increasing the victim's danger.

(3) The certified domestic violence counselor or certified facilitator shall, when possible, warn the victim if the offender exhibits behavior or makes statements in a group meeting that indicate extreme danger to the victim. If the certified domestic violence counselor or certified facilitator is unable to tell the victim this information, information about these high-risk behaviors must be given to the local victim advocacy agency. This contact does

not violate the offender's right to confidentiality.

NEW SECTION. **Section 12. Offender intervention counseling exception.** If an offender's residence is greater than 75 miles from a certified domestic violence counselor, a certified facilitator, or an offender intervention program that provides offender intervention counseling, the offender may complete the required counseling with an available counseling provider who most closely matches the requirements in [sections 1 through 15].

NEW SECTION. **Section 13. Unprofessional conduct complaint -- sanctions.** (1) A formal complaint alleging unprofessional conduct by a certified domestic violence counselor or certified facilitator may be directed to the board. The allegations must be made by an affidavit, subscribed and sworn to by the person making it, and filed with the board.

(2) The complaint may allege any unprofessional conduct as defined by board rule that constitutes a threat to the public health, safety, or welfare and that is inappropriate to the practice of a certified domestic violence counselor or certified facilitator.

(3) The board shall refer complaints of unprofessional conduct directly to the department.

(4) The board shall recommend to the department either that the person be cleared of any charges or that a sanction or combination of sanctions be imposed.

(5) The procedures in 37-1-307 through 37-1-318, regarding unprofessional conduct, apply to any proceeding under this section.

NEW SECTION. **Section 14. Deposit of fees.** All fees received by the board must be deposited in the state treasury to the credit of a state special revenue fund for use by the board in its performance of its duties under [sections 1 through 15].

NEW SECTION. **Section 15. Violation -- penalty.** (1) A violation of any provision of [sections 1 through 15] is a misdemeanor.

(2) A person convicted of a violation of [sections 1 through 15] shall be imprisoned in the county jail for a period not to exceed 6 months, fined not more than $500, or both. A person convicted of a second offense shall be punished by both a fine and imprisonment.

Section 16. Section 40-15-102, MCA, is amended to read:

"40-15-102. Eligibility for order of protection. (1) A person may file a petition for an order of protection if:

(a) the petitioner is in reasonable apprehension of bodily injury by the petitioner's partner or family member as defined in 45-5-206; or

(b) the petitioner is a victim of one of the following offenses committed by a partner or family member:

(i) assault as defined in 45-5-201;

(ii) aggravated assault as defined in 45-5-202;

(iii) intimidation as defined in 45-5-203;

(iv) partner or family member assault as defined in 45-5-206;

(v) criminal endangerment as defined in 45-5-207;

(vi) negligent endangerment as defined in 45-5-208;

(vii) assault on a minor as defined in 45-5-212;

(viii) assault with a weapon as defined in 45-5-213;

(ix) unlawful restraint as defined in 45-5-301;

(x) kidnapping as defined in 45-5-302;

(xi) aggravated kidnapping as defined in 45-5-303; or

(xii) arson as defined in 45-6-103.

(2) ~~A~~ The following individuals are eligible to file a petition for an order of protection against the offender regardless of the individual's relationship to the offender:

(a) a victim of stalking as defined in 45-5-220, incest as defined in 45-5-507, sexual assault as defined in 45-5-502, or sexual intercourse without consent as defined in 45-5-503; or

(b) a partner or family member of a victim of deliberate homicide as defined in 45-5-102 or mitigated deliberate homicide as defined in 45-5-103 ~~is eligible for an order of protection against the offender regardless of the petitioner's relationship to the offender~~.

(3) A parent, guardian ad litem, or other representative of the petitioner may file a petition for an order of protection on behalf of a minor petitioner against the petitioner's abuser. At its discretion, a court may appoint a guardian ad litem for a minor petitioner.

(4) A guardian must be appointed for a minor respondent when required by Rule 17(c), Montana Rules of Civil Procedure, or by 25-31-602. An order of protection is effective against a respondent regardless of the respondent's age.

(5) A petitioner is eligible for an order of protection whether or not:

(a) the petitioner reports the abuse to law enforcement;

(b) charges are filed; or

(c) the petitioner participates in a criminal prosecution.

(6) If a petitioner is otherwise entitled to an order of protection, the length of time between the abusive incident and the petitioner's application for an order of protection is irrelevant."

Section 17. Section 45-5-206, MCA, is amended to read:

"45-5-206. Partner or family member assault -- penalty. (1) A person commits the offense of partner or family member assault if the person:

(a) purposely or knowingly causes bodily injury to a partner or family member;

(b) negligently causes bodily injury to a partner or family member with a weapon; or

(c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member.

(2) For the purposes of [sections 1 through 15], Title 40, chapter 15, 46-6-311, and this section, the following definitions apply:

(a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(b) "Partners" means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.

(3) (a) (i) An offender convicted of partner or family member assault shall be fined an amount not less than $100 or more than $1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not less than 24 hours for a first offense.

(ii) An offender convicted of a second offense under this section shall be fined not less than $300 or more than $1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year.

(iii) Upon a first or second conviction, the offender may be ordered into misdemeanor probation as provided in 46-23-1005.

(iv) On a third or subsequent conviction for partner or family member assault, the offender shall be fined not less than $500 and not more than $50,000 and be imprisoned for a term not less than 30 days and not more

than 5 years. If the term of imprisonment does not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the state prison.

(v) If the offense was committed within the vision or hearing of a minor, the judge shall consider the minor's presence as an aggravating factor at the time of sentencing.

(b) (i) For the purpose of determining the number of convictions under this section, a conviction means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or in another state for a violation of a similar statute, which forfeiture has not been vacated. A prior conviction for domestic abuse under this section is a prior conviction for purposes of subsection (3)(a).

(ii) A conviction for assault with a weapon under 45-5-213, if the offender was a partner or family member of the victim, constitutes a conviction for the purpose of calculating prior convictions under this section.

(4) (a) An offender convicted of partner or family member assault is required to pay for and complete a counseling assessment with a focus on violence, dangerousness, and chemical dependency. An investigative criminal justice report, as defined in [section 2], must be copied and sent to the offender intervention program, as defined in [section 2], to assist the counseling provider in properly assessing the offender's need for counseling and treatment. Counseling providers shall take all required precautions to ensure the confidentiality of the report. If the report contains confidential information relating to the victim's location, that information must be deleted from the report prior to being sent to the offender intervention program.

(b) The offender shall ~~follow through on~~ complete all recommendations for counseling, referrals, attendance at psychoeducational groups, and treatment, including any indicated chemical dependency treatment, made by the counseling provider. The counseling provider must be approved by the court. The counseling must include a ~~counseling~~ preliminary assessment for counseling, as defined in [section 2] and a minimum of ~~25~~ 40 hours of counseling and attendance at psychoeducational groups, as defined in [section 2], in addition to the assessment. ~~The assessment and the counseling must be:~~

~~(i) with a person licensed under Title 37, chapter 17, 22, or 23;~~

~~(ii) with a professional person as defined in 53-21-102; or~~

~~(iii) in a specialized domestic violence intervention program.~~

~~(b)~~(c) The minimum counseling and attendance at psychoeducational groups provided in subsection ~~(4)(a)~~ (4)(b) must be directed to the violent conduct of the offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the minimum ~~25~~ 40 hours. Subsection ~~(4)(a)~~ (4)(b) does not prohibit the placement of the offender in other appropriate treatment if the court determines that there is no

available treatment program directed to the violent conduct of the offender. There is no available treatment program if the offender is required to travel more than 75 miles to attend a program that meets the statutory requirements and the requirements of the rules implementing the statutory requirements.

(d) An individual who administers a preliminary assessment for counseling, provides counseling, or facilitates psychoeducational groups under this section must be certified by the board of social work examiners and professional counselors as provided in [sections 1 through 15].

(5) In addition to any sentence imposed under subsections (3) and (4), after determining the financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss, and counseling costs.

(6) In addition to the requirements of subsection (5), if financially able, the offender must be ordered to pay for the costs of the offender's probation, if probation is ordered by the court.

(7) The court may prohibit an offender convicted under this section from possession or use of the firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

(8) ~~At the time of sentencing, the~~ The court shall provide an offender with a written copy of the offender's sentence at the time of sentencing or within 2 weeks of sentencing if the copy is sent electronically or by mail."

NEW SECTION. **Section 18. Grandfather clause -- transition.** A person providing domestic violence counseling services or facilitator services to an offender convicted of an assault on a partner or family member on [the effective date of this section] may continue to provide those services without being certified, as provided in [sections 1 through 15], until January 1, 2004. After January 1, 2004, domestic violence counseling and facilitator services for offenders convicted of an assault on a partner or family member must be provided by certified individuals.

NEW SECTION. **Section 19. Codification instruction.** [Sections 1 through 15] are intended to be codified as an integral part of Title 37, chapter 23, and the provisions of Title 37, chapter 23, apply to [sections 1 through 15].

- END -

FISCAL NOTE

Bill #: HB0313 **Title:** Revise laws relating to domestic violence

Primary Sponsor: Gay Ann Masolo **Status:** As Introduced

Sponsor signature Date Chuck Swysgood, Budget Director Date

Fiscal Summary

	FY2002 Difference	FY2003 Difference
Expenditures:		
State Special Revenue	$2,700	$1,850
Revenue:		
State Special Revenue	$250	$1,250
Net Impact on General Fund Balance:	**$0**	**$0**

Yes	No		Yes	No	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget	X		Significant Long-Term Impacts
	X	Dedicated Revenue Form Attached		X	Family Impact Form Attached

Fiscal Analysis

ASSUMPTIONS:

Department of Commerce

1. The work associated with the initial implementation of HB 313 would be absorbed within the existing staff assigned to the Board of Social Work Examiners and Professional Counselors. The board will conduct one special meeting each fiscal year in order to draft rules as required by Section 3, and to approve the applications for certification as a domestic violence counselor and facilitator. Per diem is $50/day and there are seven members on the board for a total cost of $350. Travel costs for one meeting of the board are $1,500, which includes commercial airfare rates for members located in remote locations.
2. Additional operating expenses in FY 2002 include ARM filing fees (10 pages @$35 = $350), and a court reporter for the administrative rule hearing ($500).

3. It is estimated that approximately 5 counselors would apply in the FY 2002 and 25 in FY 2003 for the certification, and that they would pay an application fee of approximately $50. It is not known how many applications would be received for facilitators for psycho-educational groups, but it is anticipated that the application fee would be approximately $50.
4. There would be an additional renewal fee of about $25 for individuals who have the certification for a counselor or facilitator.
5.

FISCAL IMPACT:

	FY2002 Difference	FY2003 Difference
Department of Commerce - POL		
Expenditures:		
Personal Services – Per Diem	350	350
Operating Expenses	2,350	1,500
TOTAL	$2,700	$1,850
Funding:		
State Special Revenue (02)	$2,700	$1,850
Revenues:		
State Special Revenue (02)	$250	$1,250
Net Impact to Fund Balance (Revenue minus Expenditure):		
State Special Revenue (02)	($2,450)	($600)

LONG-RANGE IMPACTS:
After the January 1, 2004 date, when all individuals who are providing domestic violence counseling must be certified, it is anticipated that an additional 0.50 FTE will be required to administer the certifications.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on February 9, 2001 at 7:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: **HB 475 - 2-05-01**
HB 405 - 2-06-01

HB 313 - 1-22-01
HB 360 - 1-25-01

Executive Action: **HB 405 - DPAA**
HB 390 - DPAA
HB 434 - DPAA
HB 219 - DPAA

EXECUTIVE ACTION ON HB 434

Motion: **REP. ADAMS** moved that **HB 434 DO PASS. #1**

Discussion: **Rep. Noennig.**

Motion: **REP. NOENNIG** moved a conceptual motion that **HB 434 BE AMENDED. #2**

Discussion: **Reps. Noennig, Thomas, Mr. MacMaster, Peterson.**

Vote: **The Noennig amendment Motion #2 carried unanimously 20-0**

Discussion: **Reps. Eggers, Thomas, Noennig.**

Motion/Vote: **REP. LASZLOFFY** moved that **HB 434 BE AMENDED, CONCEPTUALLY, To remove the word "CHURCH". #3 Motion carried unanimously 20-0.**

Discussion: **Reps. Laszloffy, Eggers, Mangan, Noennig, Clancy, Newman, Thomas, Clark.**

Motion: **REP. LASZLOFFY** moved that **HB 434 BE AMENDED to strike the words "Licensed Day-care Centers". #4 Withdrawn**

Motion/Vote: **REP. LASZLOFFY** moved that **HB 434 DO PASS AS AMENDED. #5 Motion carried 15-3 with Reps. Shockley, Gallus and Younkin voting no.**

EXECUTIVE ACTION ON HB 471

Motion: **REP. PETERSON** moved that **HB 471 DO PASS. #6**

Motion/Vote: **REP. PETERSON** moved that **HB 471 BE AMENDED. #7** Motion carried unanimously 18-0.

Motion: **REP. PETERSON** moved that **HB 471 DO PASS AS AMENDED. #8**

Discussion: **Reps. Clancy, Peterson, Mangan, Curtiss, Gallus, Adams, Rice.**

{Tape : 1; Side : A; Approx. Time Counter : 0 - 29.2}
{Tape : 1; Side : B; Approx. Time Counter : 0.1 - 7}

Motion/Vote: **REP. PETERSON** moved a substitute motion that **HB 471 BE POSTPONED. #9. Motion carried 12-7 with Reps. Laszloffy, Clancy, Gallus, Newman, Noennig, Rice and Wolery voting no.**

EXECUTIVE ACTION ON HB 390

Motion: **REP. ADAMS** moved that **HB 390 DO PASS. #10**

Motion: **REP. NEWMAN** moved that **HB 390 BE AMENDED to strike lines 18 and 19 from the Bill. #11 Motion withdrawn.**

Discussion: **Reps. Noennig, Newman, Shockley.**

Motion/Vote: **REP. SHOCKLEY** moved that **HB 390 BE AMENDED, conceptually that paragraph 4, sub 4, to not only relate to the defendant but to the plaintiff. #12** Motion carried unanimously 20-0.

Discussion: **Reps. Curtiss, Noennig, Shockley, Gallus, Eggers, Newman.**

Motion/Vote: **REP. SHOCKLEY** moved that **HB 390 DO PASS AS AMENDED. #13. Motion carried 17-2 with Reps. Gallus and Gutsche voting no.**

{Tape : 1; Side : B; Approx. Time Counter : 7 - 22.9}
{Tape : 1; Side : B; Approx. Time Counter : 22.9 - 30.5}

HEARING ON HB 313

Sponsor: **Rep. Gay Ann Masolo, HD 40, Townsend,** said this Bill relates to domestic violence and revising laws for intervention counseling referrals for persons convicted of an assault on a partner or family member. Treatment will include any indicated chemical dependency treatment and will provide reports to the sentencing court and probation officer.

Proponents: **Judith Wang, Assistant City Attorney, Office of the City Attorney, Missoula, EXHIBIT(juh33a01).**

John Buttram, Licensed Professional Counselor, Kelispell.

Stacey Umhey, Supporters for an Abuse Free Environment, Stevensville.

Penni Raymond, Missoula EXHIBIT(juh33a02).

Alison Paul, Managing Attorney, Domestic Violence Unit of Montana Legal Services.

Cindy Weese, Director, Montana Coalition Against Domestic and Sexual Violence.

Pam Bucy, Assistant Attorney General

Tootie Welker, Program Director, Domestic Violence Program, Sanders County. EXHIBIT(juh33a03) EXHIBIT(juh33a04) EXHIBIT(juh33a05)
EXHIBIT(juh33a06) EXHIBIT(juh33a07)

Matthew Dale, Executive Director, Friendship Center, Helena.

Mikie Baker-Hijek, Great Falls

{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 30.4}
{Tape : 2; Side : B; Approx. Time Counter : 0.1 - 0.4}

Opponents: Betty Ann Roan, Deputy Administrator, Alternatives, Inc., Billings EXHIBIT(juh33a08) EXHIBIT(juh33a09)

Dr. Deb Sanchez, Clinical Psychologist, Helena EXHIBIT(juh33a10)

Colleen Murphy, Executive Director, Montana Chapter National Association of Social Workers. EXHIBIT(juh33a11)

Mary McCue, Montana Clinical Mental Health Counselors' Association. EXHIBIT(juh33a12)

Robert Throssell, Montana Magistrates' Association.

Mike Thatcher, Executive Director, Community Counseling Services, Inc. Butte.

Informational Witness: Diana Leibinger-Koch, Staff Attorney, Department of Corrections.

{Tape : 2; Side : B; Approx. Time Counter : 0.4 - 30}

Questions from Committee Members and Responses: **Reps. Newman, Gutsche, Rice, Hurdle, Clark, Noennig, Peterson to Ms. Wang, Ms. Welker, Ms. Roan for clarification and to answer their concerns.**

Closing by Sponsor: **Rep. Masolo closed the Hearing on HB 313 by saying her main goal is to help end violence and hopes this Bill, in some way, can do that. She understands the concerns of some people because of the rural and remote areas that are in Montana.**

EXHIBIT(juh33a13) EXHIBIT(juh33a14) mailed and given to Secretary after the Hearing.

HEARING ON HB 475

Sponsor: **Rep. Bob Davies, HD 27, Bozeman** said this Bill will try to reduce the number of frivolous suits that are filed. This is a problem and the question is how do you address it? This is an effort to cause the loser in a lawsuit to pay the cost.

Proponents: None

Opponents: **Stan Koleczyc, Attorney, Montana Municipal Insurance Authority.**

{Tape : 3; Side : A; Approx. Time Counter : 0.1 - 29.9}

John Sullivan, Attorney, Montana Defense Trial Lawyers, Helena.

Al Smith, Montana Trial Lawyers' Association, Helena

Greg Van Horssen, State Fire Insurance Co., Helena

Questions from Committee Members and Responses: None

Closing by Sponsor: **Rep. Davies closed the Hearing on HB 475.**

HEARING ON HB 360

Sponsor: **Rep. Paul Clark, HD 72, Trout Creek said this Bill** is to **accurately name and define** sexual violence against children for what it really is, **a violent crime against children.** This Bill is a change in the definition Section of the Code 46-18-104 as applied to Section 45-05-502, Sexual Assault Against a Child, Section 45-05-503a, Sexual Intercourse Without Consent with a Child. He passed out an amendment at this time **EXHIBIT(juh33a15)**

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on February 16, 2001 at 7:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: Rep. Steven Gallus (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: **HB 603 - 2-15-01**
HB 585 - 2-15-01
HB 563 - 2-15-01

HB 560 - 2-15-01
HB 590 - 2-15-01
HB 570 - 2-15-01

Executive Action: HB 603 - DPAA
HB 313 - DPAA
HB 560 - DPAA

HEARING ON HB 603

Sponsor: Rep. Jim Shockley, HD 61, Ravalli County said HB 603 is a Committee Bill which would provide a statute that would let the Attorney General know that a state agency is involved in litigation.

Proponents: Chris Tweeten, Chief Counsel for the Attorney General's office, EXHIBIT(juh39a01)

Opponents: None

Questions from Committee Members and Responses: Reps. Eggers, Peterson, Harris, Noennig, Hurdle to Mr. Tweeten.

Closing by Sponsor: Rep. Shockley closed the Hearing on HB 603 by saying he believes it is a good idea to add the concurring language Mr. Tweeten proposed. There is also a statute that provides that the Governor can secure her own counsel in certain circumstances.

EXECUTIVE ACTION ON HB 603

Motion: REP. MANGAN moved that HB 603 DO PASS. #1

Discussion: Reps. Eggers, Shockley, Harris, Noennig, .

{Tape : 1; Side : A; Approx. Time Counter : 0 - 29.8}

Motion/Vote: REP. NOENNIG moved that HB 603 BE AMENDED. #2
Motion on Noennig amendment carried unanimously 19-0.

Motion: REP. SHOCKLEY moved that HB 603 DO PASS AS AMENDED. #3

Discussion: Rep. Peterson.

Vote: Motion #3 carried unanimously 19-0.

{Tape : 1; Side : B; Approx. Time Counter : 0.1 - 4.3}

EXECUTIVE ACTION ON HB 313

Motion: **REP. NEWMAN** moved that **HB 313 DO PASS. #4**

Discussion: **Reps. Peterson, Newman.**

Motion: **REP. NEWMAN** moved that **HB 313 BE AMENDED. EXHIBIT(juh39a02) #5**

Discussion: **Reps. Newman, Younkin, Harris, Noennig, Clark, Mr. MacMaster.**

Substitute Motion: **REP. CLARK** made a substitute motion that **HB 313 BE AMENDED. #6 Withdrawn EXHIBIT(juh39a03)**

Discussion: **Reps. Mangan, Younkin, Harris, Hurdle, Peterson, Thomas. Rep. Newman explained the amendments.**

{Tape : 1; Side : B; Approx. Time Counter : 4.3 - 29.4}
{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 8.9}

Vote: **Newman Motion #5 carried unanimously 19-0.**

Motion/Vote: **REP. MANGAN** moved that **HB 313 DO PASS AS AMENDED. #7 Motion carried unanimously. 19-0**

HEARING ON HB 560

Sponsor: **Rep. Mark Noennig, HD 9, Billings** said this Bill is called an "Offers of Settlement" Bill. The purpose of the Bill is to reduce frivolous claims and litigation during settlement of claims and reduce the cost of litigation. When a case is pending, within certain time limits, one party can offer to settle the case to the other party. The other party has to respond in the prescribed period of time, 10 days. They can either accept it or reject it. If they don't respond, it's rejected and if that party that rejected the offer doesn't do better than that in the final outcome, then that party is responsible to pay the other party's attorneys' fees from the date of the offer forward.

Proponents: **Bob Worthington, CEO, Montana Municipal Insurance Authority**

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 20, 2001 at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 313. HB 165, HB 254, HB 547, 3/15/2001
Executive Action: None

HEARING ON HB 313

Sponsor: **REP. GAY ANN MASOLO, HD 40, TOWNSEND**

Proponents: **Judy Wang, Assistant City Attorney, Missoula**
Cindy Weese, Executive Director, MT. Coalition Against Domestic & Sexual Violence
Mikie Baker-Hajek, Homicide Survivor

Mary McCue, MT. Clinical Mental Health Counselors Association
Sue Weingartner, MT. Psychology Association
Tootie Welker, Director Sanders County Coalition for Families
Pam Bucy, Assistant Attorney General
Colleen Murphy, Executive Director, National Assoc. of Social Workers

Opponents: **Bruce Spencer, Attorney Board of Social Worker Examiners**
Robert Throssell, MT. Magistrates Association

Opening Statement by Sponsor:

REP. GAY ANN MASOLO, HD 40, TOWNSEND, said this bill had been amended in the House and dealt with the investigative criminal justice report. She pointed out sections of the bill and mentioned the protection of a partner or family member, who may file a petition for an order of protection against the offender. She felt this bill would assist Montana with domestic law and domestic situations.

Proponents' Testimony:

Judy Wang, Assistant City Attorney, Missoula, handed in her testimony and letters of support **EXHIBIT(jus63a01)**.

Cindy Weese, Executive Director, MT. Coalition Against Domestic & Sexual Violence, handed in her testimony **EXHIBIT(jus63a02)**.

Mikie Baker-Hajek, Homicide Survivor, handed in her testimony **EXHIBIT(jus63a03)**.

May McCue, Montana Clinical Mental Health Counselors, handed in a copy of amendments and language explained within the bill **EXHIBIT(jus63a04)**. She talked about the amendments and references of the changes in language. She explained what was removed from the bill.

Sue Weingartner, MT. Psychology Association, handed in a testimony **EXHIBIT(jus63a05)**.

Tootie Welker, Director Sanders County Coalition for Families, handed in her testimony and letters of support **EXHIBIT(jus63a06)**.

Pam Bucy, Assistant Attorney General, mentioned the changes within the bill and the increasing need for counseling for domestic violence.

Colleen Murphy, Executive Director, National Association of Social Workers, explained the concern of the language on page ten of the bill pertaining to child hearsay. She said minors should not be placed in the middle of a domestic abuse.

{Tape 1; Side B}

Opponents' Testimony:

Bruce Spencer, Attorney Board of Social Worker Examiners, handed in his testimony **EXHIBIT(jus63a07).**

Robert Throssell, MT. Magistrates Association, mentioned two concerns, the first being from page two under the transmitting of the criminal report. He thought that to be unclear as to how the report gets to the counselors. The other concerns of the magistrates deals with the number of hours being changed. He said it becomes difficult to enforce extra workload hours.

Questions from Committee Members and Responses:

SEN. RIC HOLDEN referred to Dawson County and domestic violence issues. He asked if adding hours wouldn't that become costly by adding more personal resources. **Judy Wang** said they have asked for lower funds and added hours would assist with the changes in behavior of the criminal.

SEN. HOLDEN asked how can this help the program by adding more hours and resources. **Judy Wang** said the current law reads 40 hours for offenders to complete in a year and 25 hours won't let them go any farther to achieve a change in the behavior.

SEN. JERRY O'NEIL asked about the cost of the current 25 hours. **Judy Wang** answered it was $400 for 25 hours.

SEN. O'NEIL asked if 40 hours would be proportional. **Judy Wang** said there is an assessment and the cost of the assessment should not increase.

SEN. O'NEIL asked if offender intervention programs are already set up in the state. **Judy Wang** said there are programs in parts of the state.

SEN. O'NEIL asked if the programs would be set up all over the state. **Judy Wang** said it is a goal of the coalition to work with domestic and violence shelters around the state.

SEN. O'NEIL asked if this was a public program or a program with private counselors. **Judy Wang** said it is a private program.

SEN. O'NEIL asked if any group of counselors could set up their own intervention program. **Judy Wang** answered yes, they could.

SEN. O'NEIL asked which the court would use. **Judy Wang** said that is up to the court in those areas.

SEN. O'NEIL asked if the intervention program notifies the court dealing with actions. **Judy Wang** said there is a communication set up in the bill.

SEN. O'NEIL asked if this program has a group of counselors or are they separate. **Judy Wang** answered it could be a group or a private counselors and it would depend upon each area.

SEN. O'NEIL asked about establishing intervention programs. **Judy Wang** said generally the programs are already in existence.

SEN. O'NEIL asked if this bill would require every county to have an offender intervention program. **Judy Wang** said it depends upon the court referral.

SEN. O'NEIL didn't feel this bill would work without an offender intervention program in existence. He asked how would this work with counties that are not set up for these programs. **Judy Wang** said this is a problem that already exists.

SEN. STEVE DOHERTY pointed to Section four and asked if the counselor offered confidentiality. **Judy Wang** said the preferred method is group counseling.

{Tape 2; Side A}

SEN. MIKE HALLIGAN asked if the duty to warn was consistent. **Judy Wang** said they were consistent, but need to be inclusive.

SEN. HALLIGAN asked why there is a need for assessment. **Judy Wang** said in many cases the assessment is needed.

SEN. HALLIGAN asked the cost of a doctor per hour. **Judy Wang** explained in Missoula the cost ranges from $15 to $20 an hour for

group counseling. **Colleen Murphy** said for private counseling the cost is anywhere from $60 to $90.

SEN. HALLIGAN asked what was the average length of time of counseling needed to be completed. **Tootie Welker** said the offender could finish within eight months and that would be one to two hours weekly.

SEN. O'NEIL asked how the counseling was being provided now. **Tootie Welker** answered yes, counseling is now being provided.

SEN. O'NEIL asked how many hours are required on the program. **Tootie Welker** answered the minimum was 25 hours.

SEN. O'NEIL asked if 25 hours was effective. **Tootie Welker** said the program is effective now with the 25 hours.

SEN. O'NEIL asked if 40 hour programs were more effective. **Tootie Welker** said there is no clear convincing evidence on hours used.

Closing by Sponsor:

REP. GAY ANN MASOLO, HD 40, TOWNSEND, explained the background as a teacher and how children were involved in domestic abuse. She summarized the bill and the extension of hours from 25 to 40 to assist with treatment of the offender.

HEARING ON HB 165

Sponsor: REP. GAIL GUTSCHE, HD 66, MISSOULA

Proponents:
REP. CAROL JUNEAU, HD 85, BROWNING
Mike Foster, Governor's Office
REP. NORMA BIXBY, HD 5, LAME DEER
Karl Fourstar, State Burial Board
REP. DAN MCGEE, HD 21, LAUREL
REP. JOEY JAYNE, HD 73, ARLEE
REP. FRANK SMITH, HD 98, POPLAR
Sharon Hoff-Brodowy, MT. Catholic Conference
Germaine White, Salish & Kootenai Tribes
Claire Sharlo, Representing Family
Antoine Incashola, Director Flathead Reservation
George Ochenski, Salish & Kootenai Tribes
Shaun Whitewolf, Northern Cheyenne Tribes

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 29, 2001 at 8:30 A.M., in Room 303 Capitol, then turned it over to **SEN. DUANE GRIMES**.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Anne Felstet, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: HB 313

EXECUTIVE ACTION ON HB 313

Motion: **SEN. HOLDEN** moved that **AMENDMENTS HB031302.avl BE ADOPTED.**

Discussion:

SEN. RIC HOLDEN explained these amendments were prepared by the Mental Health Coalition.

Valencia Lane, Legislative Staffer, understood the House Judiciary committee missed a few references when they amended the bill. Therefore, these amendments cleaned that up.

Mary McCue, MT Health Council Association, addressed the amendment. Section 1 of the original draft contained definitions. It defined certified domestic violence counselor and certified facilitator. The House amended it to remove those concepts, but the amendments only removed the word, "certified". It left in the concept of domestic violence counselor and facilitator. The purpose of the amendments was to eliminate those concepts entirely. They did not want to create new categories that were not defined. She understood that the sponsor and primary proponents to the bill did not object to the amendments.

SEN. DUANE GRIMES asked who currently was subject to the 25 hours.

Ms. McCue replied psychologists, licensed professional counselors, social workers; anybody who within their training had the background and education to do this type of counseling.

SEN. GRIMES wondered if some people were better skilled/equipped than others to handle domestic violence issues.

Ms. McCue agreed and felt that it applied to any kind of counseling. She likened it to the legal profession where some were better in one area than another and were charged with determining if they were capable of providing the specific service to a client.

SEN. GRIMES suggested that some victims of domestic violence had gone to counselors that had not worked, but were able to find another one who worked. He felt this change needed to be made, although, he wanted to retain the idea that these people knew how to deal with the issues. He clarified that retaining this language required new training and certification.

Ms. McCue said she was concerned because the definitions had been removed. Therefore, it could imply that these were some sort of special category of counselor. They urged those decisions be left with licensure boards because they had the rule-making authority to adopt rules to set some standards for different kinds of counseling. For example, the Board of Psychologists was in the process of adopting a rule to set standards for people who were doing child custody evaluations. They were doing this based on feedback. They urged the committee to let the boards deal with the professions.

SEN. GRIMES questioned the possibility of removing domestic violence, but inserting counselor services experienced in domestic abuse. This would give guidance to ensure it would work. He felt this profession demanded experience.

Ms. Lane clarified that by doing that, it revisited the original bill. However, the House amended the bill to remove what he proposed.

Colleen Murphy, MT National Association of Social Workers, said all licensed professional mental health persons had a duty to not practice beyond their scope of practice. Therefore, it was incumbent upon the professional to not practice beyond their scope. If they didn't know anything about the issue, they had no business running the groups.

SEN. JERRY O'NEIL cautioned that this was working with people's minds and not logic. It could happen that experienced counselors didn't help an individual, but another counselor could. Therefore, he didn't think it was a good idea to close the door to more counselors by specifying which counselors were available. That made it so people might not have anyone to go to for help.

Vote: Motion to **adopt HB031302.avl amendments carried 8-0, SEN. GROSFIELD** excused.

Motion: **SEN. HOLDEN** moved that **AMENDMENTS HB031301 #1 AND #2 ONLY BE ADOPTED.**

Discussion:

SEN. HOLDEN referred to the bill on page 10, lines 25 and 26. He felt it was more broad than what they wanted to do. If someone was going to jail and do other treatment counseling with fines and penalties, then the first four criteria would address the issue adequately.

SEN. MIKE HALLIGAN said the motion was a good idea to potentially not involve a kid whom the judge might think would need to testify to find out whether the child was within hearing or vision. However, in most cases, an adult would be asked if children were in the house and aware of the incident. Although, when a person showed disregard in front of children, it indicated a new level of disregard for the marital relationship as well as the children. He felt the domestic violence counselor would ask whether the abuse occurred in front of the children, and it was an important factor. However, it might not be necessary to put in statute.

SEN. GRIMES read a excerpt by Judy Weng regarding the issue. It argued it was not a good idea to force a child to testify against a parent if the child would be returned to the home of that parent. He asked if the language required the child to testify. He didn't think it did.

SEN. HALLIGAN agreed that it didn't require the child to testify, unless a witness couldn't testify to whether a child might have heard the violence. He said the hearing part was troublesome.

SEN. O'NEIL agreed with **SEN. HOLDEN** because of the ability to prove it. It was too tenuous, so would be better to strike.

SEN. GRIMES suggested changing the word "shall" to "may" on line 25 to make it discretionary on the part of the court.

Ms. Lane replied it had the effect of changing it from mandatory to discretionary. However, it didn't address the issue **SEN. HALLIGAN** and **SEN. O'NEIL** spoke to in terms of enhancing sentences. By enhancing the sentences it would have to be pleaded and proven. She also pointed out the use of the "aggravating factor" had no well-known meaning in criminal law. In criminal law, the only place that "aggravating factors" were considered was in the death sentence penalty statutes. Not only the problems discussed were present, but "aggravating factors" further confused the issue.

Vote: Motion to **adopt #1 & #2 of HB031301.avl carried 7-1 with Doherty voting no. SEN. GROSFIELD** excused.

Motion: **SEN. HOLDEN** moved **HB031301.avl #3 & #4.**

Discussion:

SEN. HOLDEN said these amendments returned the standard to current law. On page 11, the Department and others wanted to increase it to 40 hours of counseling. He argued it was a major

flaw because those in the field already had problems with the statutory limit of 25 hours. He talked to domestic abuse counselors in the field who said they didn't have the personnel or time to do 25 hours of compliance as it was. Increasing it to 40 would not get done. He pointed out he asked that question of **Pam Bucy, Assistant Attorney General,** during the hearing and she replied, "they're very lucky to get 25 hours done in a year." Therefore, two sources said 25 hours was already difficult enough. He proposed the bill should be passed out, but the current standard of 25 should remain.

SEN. GRIMES said that was troubling, but he felt the bill was about these hours. He was approached to carry the bill and they said the argument was to increase counseling because the current level was not working. He said it made sense to him, and it was the genesis of the bill.

SEN. O'NEIL recalled testimony stating that no studies in the U.S. showed that 40 hours of counseling worked better than 25 hours of counseling. Also, the courts currently had the power to order 40 hours of counseling. Based on the results of judges ordering that amount, maybe next session the hours could be addressed. However, it was shown that 25 hours of counseling did have an impact on the attendee in terms of them realizing they were responsible for the acts he/she took.

SEN. GRIMES asked **Ms. Murphy** if the language "up to 40 hours" could be used and its effect.

Ms. Murphy replied this idea came from the other group. Members of her organization had concerns about the 40 hours based on what **SEN. HOLDEN** pointed out. Unfortunately, this was a problem that no one knew quite how to fix. She believed a judge was not limited to only one 25 hours; 25 hours was the minimum. Therefore, the courts could authorize as much counseling as they deemed necessary. **SEN. HALLIGAN** agreed. She noted the sponsor of the bill wanted the minimum raised to 40.

Vote: Motion to **adopt #3 and #4 of HB031301.avl carried 5-3 with Doherty, Grimes, and Pease voting no.**

Motion/Vote: **SEN. O'NEIL** moved that **HB 313 BE TABLED. Motion failed 2-6 with Holden and O'Neil voting aye.**

Motion/Vote: **SEN. HALLIGAN** moved that **HB 313 BE CONCURRED IN AS AMENDED. Motion carried 7-1 with O'Neil voting no, SEN. GROSFIELD** excused. **SEN. GRIMES** would carry the bill on the Senate Floor.

ADJOURNMENT

Adjournment: 9:05 A.M.

SEN. DUANE GRIMES, Vice Chairman

ANNE FELSTET, Secretary

LG/AFCT

EXHIBIT(jus71aad)